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11 and on behalf of a Class of all other persons similarly
situated

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 KATHYA TAPIA, on behalf of herself
17 and on behalf of a Class of all other
persons similarly situated

18 Plaintiff,

19 vs.

20 STERLING JEWELERS, INC., an
unknown business entity; SIGNET
21 JEWELERS LTD, an unknown business
entity, and DOES 1 through 100,
22 inclusive,

23 Defendants.

24 **Case No. 5:14-CV-00624-EJD**
CLASS ACTION

25 **Assigned For All Purposes To:**
Honorable Edward J. Davila
Courtroom 4, 5th Floor

26 **STIPULATED PROTECTIVE**
ORDER

27 **MODIFIED BY THE COURT**

28 [Re: Dkt. 19]

Action Filed: December 19, 2013
Removal Date: February 10, 2014

1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation
17 of information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless
27 of the medium or manner in which it is generated, stored, or maintained (including,
28

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party
12 to this action but are retained to represent or advise a party to this action and have
13 appeared in this action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.

28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
 3 Protected Material (as defined above), but also (1) any information copied or
 4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 5 compilations of Protected Material; and (3) any testimony, conversations, or
 6 presentations by Parties or their Counsel that might reveal Protected Material.
 7 However, the protections conferred by this Stipulation and Order do not cover the
 8 following information: (a) any information that is in the public domain at the time of
 9 disclosure to a Receiving Party or becomes part of the public domain after its
 10 disclosure to a Receiving Party as a result of publication not involving a violation of
 11 this Order, including becoming part of the public record through trial or otherwise;
 12 and (b) any information known to the Receiving Party prior to the disclosure or
 13 obtained by the Receiving Party after the disclosure from a source who obtained the
 14 information lawfully and under no obligation of confidentiality to the Designating
 15 Party. Any use of Protected Material at trial shall be governed by a separate
 16 agreement or order.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
 19 imposed by this Order shall remain in effect until a Designating Party agrees
 20 otherwise in writing or a court order otherwise directs. Final disposition shall be
 21 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
 22 or without prejudice; and (2) final judgment herein after the completion and
 23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 24 including the time limits for filing any motions or applications for extension of time
 25 pursuant to applicable law. **For a period of six months after final disposition of this litigation,
 this court will retain jurisdiction to enforce the terms of this order.**

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.
 28 Each Party or Non-Party that designates information or items for protection under

1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify – so that other portions of the material, documents,
5 items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber or retard the case development process or
10 to impose unnecessary expenses and burdens on other parties) expose the
11 Designating Party to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents,
22 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
23 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
24 protected material. If only a portion or portions of the material on a page qualifies for
25 protection, the Producing Party also must clearly identify the protected portion(s)
26 (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection
 2 and before the designation, all of the material made available for inspection shall be
 3 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
 4 it wants copied and produced, the Producing Party must determine which documents,
 5 or portions thereof, qualify for protection under this Order. Then, before producing
 6 the specified documents, the Producing Party must affix the "CONFIDENTIAL"
 7 legend to each page that contains Protected Material. If only a portion or portions of
 8 the material on a page qualifies for protection, the Producing Party also must clearly
 9 identify the protected portion(s) (e.g., by making appropriate markings in the
 10 margins).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 12 that the Designating Party identify on the record, before the close of the deposition,
 13 hearing, or other proceeding, all protected testimony.

14 (c) for information produced in some form other than documentary and for
 15 any other tangible items, that the Producing Party affix in a prominent place on the
 16 exterior of the container or containers in which the information or item is stored the
 17 legend "CONFIDENTIAL." If only a portion or portions of the information or item
 18 warrant protection, the Producing Party, to the extent practicable, shall identify the
 19 protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 21 failure to designate qualified information or items does not, standing alone, waive
 22 the Designating Party's right to secure protection under this Order for such material.
 23 Upon timely correction of a designation, the Receiving Party must make reasonable
 24 efforts to assure that the material is treated in accordance with the provisions of this
 25 Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 28 designation of confidentiality at any time. Unless a prompt challenge to a

1 Designating Party's confidentiality designation is necessary to avoid foreseeable,
 2 substantial unfairness, unnecessary economic burdens, or a significant disruption or
 3 delay of the litigation, a Party does not waive its right to challenge a confidentiality
 4 designation by electing not to mount a challenge promptly after the original
 5 designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 7 resolution process by providing written notice of each designation it is challenging
 8 and describing the basis for each challenge. To avoid ambiguity as to whether a
 9 challenge has been made, the written notice must recite that the challenge to
 10 confidentiality is being made in accordance with this specific paragraph of the
 11 Protective Order. The parties shall attempt to resolve each challenge in good faith
 12 and must begin the process by conferring directly (in voice to voice dialogue; other
 13 forms of communication are not sufficient) within 14 days of the date of service of
 14 notice. In conferring, the Challenging Party must explain the basis for its belief that
 15 the confidentiality designation was not proper and must give the Designating Party
 16 an opportunity to review the designated material, to reconsider the circumstances,
 17 and, if no change in designation is offered, to explain the basis for the chosen
 18 designation. A Challenging Party may proceed to the next stage of the challenge
 19 process only if it has engaged in this meet and confer process first or establishes that
 20 the Designating Party is unwilling to participate in the meet and confer process in a
 21 timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
 23 they shall comply with the undersigned's Standing Order re Civil Discovery
 24 court intervention, ~~the Designating Party shall file and serve a motion to retain
 25 Disputes
 26 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
 27 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days
 28 of the parties agreeing that the meet and confer process will not resolve their dispute,~~
 In each Discovery Dispute Joint Report (DDJR), the parties
 whichever is earlier. Each such motion must be accompanied by a competent
 must attest that they have
 declaration affirming that the movant has complied with the meet and confer

1 requirements imposed in the preceding paragraph. Failure by the Designating Party
 2 seek court intervention within the period set out in Standing Order, Section D
 3 to make such a motion including the required declaration within 21 days (or 14 days,
 4 if applicable) shall automatically waive the confidentiality designation for each
 5 challenged designation. In addition, the Challenging Party may file a motion
 6 with respect to challenging a confidentiality designation at any time if there is good cause for doing
 7 so, including a challenge to the designation of a deposition transcript or any portions
 8 In any DDJR the parties must attest thereof. Any motion brought pursuant to this provision must be accompanied by a
 9 that they have competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the
 11 Designating Party. Frivolous challenges, and those made for an improper purpose
 12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 13 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 14 seek court intervention the confidentiality designation by failing to file a motion to retain confidentiality as
 15 described above, all parties shall continue to afford the material in question the level
 16 of protection to which it is entitled under the Producing Party's designation until the
 17 court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 20 disclosed or produced by another Party or by a Non-Party in connection with this
 21 case only for prosecuting, defending, or attempting to settle this litigation. Such
 22 Protected Material may be disclosed only to the categories of persons and under the
 23 conditions described in this Order. When the litigation has been terminated, a
 24 Receiving Party must comply with the provisions of section 13 below (FINAL
 25 DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a
 27 location and in a secure manner that ensures that access is limited to the persons
 28 authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to
7 disclose the information for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as **Exhibit**
9 **A**;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and
12 who have signed the “Acknowledgment and Agreement to Be Bound” (**Exhibit A**);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (**Exhibit A**);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock
18 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
19 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
20 (**Exhibit A**);

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to
23 Be Bound” (**Exhibit A**), unless otherwise agreed by the Designating Party or ordered
24 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
25 reveal Protected Material must be separately bound by the court reporter and may not
26 be disclosed to anyone except as permitted under this Stipulated Protective Order.

27 (g) the author or recipient of a document containing the information or a
28 custodian or other person who otherwise possessed or knew the information.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material – and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-Party
25 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
26 Parties in connection with this litigation is protected by the remedies and relief provided
27 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
28 from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a
2 Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information,
4 then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party that
6 some or all of the information requested is subject to a confidentiality agreement with a
7 Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
9 Order in this litigation, the relevant discovery request(s), and a reasonably specific
10 description of the information requested; and

11 (3) make the information requested available for inspection by the Non-
12 Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court within
14 14 days of receiving the notice and accompanying information, the Receiving Party may
15 produce the Non-Party's confidential information responsive to the discovery request. If
16 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
17 information in its possession or control that is subject to the confidentiality agreement
18 with the Non-Party before a determination by the court. Absent a court order to the
19 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
20 court of its Protected Material. **All disclosure and discovery disputes are subject to the
undersigned's Standing Order re Civil Discovery Disputes.**

21 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
25 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
26 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
27 unauthorized disclosures were made of all the terms of this Order, and (d) request such
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1 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
 2 attached hereto as **Exhibit A**.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
 6 inadvertently produced material is subject to a claim of privilege or other protection,
 7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 9 may be established in an e-discovery order that provides for production without prior
 10 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 11 parties reach an agreement on the effect of disclosure of a communication or
 12 information covered by the attorney-client privilege or work product protection, the
 13 parties may incorporate their agreement in the stipulated protective order submitted
 14 to the court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 17 person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 19 Protective Order no Party waives any right it otherwise would have to object to
 20 disclosing or producing any information or item on any ground not addressed in this
 21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the
 24 Designating Party or a court order secured after appropriate notice to all interested
 25 persons, a Party may not file in the public record in this action any Protected
 26 Material. A Party that seeks to file under seal any Protected Material must comply
 27 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant
 28 to a court order authorizing the sealing of the specific Protected Material at issue.

1 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
2 establishing that the Protected Material at issue is privileged, protectable as a trade
3 secret, or otherwise entitled to protection under the law. If a Receiving Party's
4 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is
5 denied by the court, then the Receiving Party may file the information in the public
6 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.
^{or (f)}

7 13. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in
9 paragraph 4, each Receiving Party must return all Protected Material to the
10 Producing Party or destroy such material. As used in this subdivision, "all Protected
11 Material" includes all copies, abstracts, compilations, summaries, and any other
12 format reproducing or capturing any of the Protected Material. Whether the
13 Protected Material is returned or destroyed, the Receiving Party must submit a
14 written certification to the Producing Party (and, if not the same person or entity, to
15 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
16 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
17 that the Receiving Party has not retained any copies, abstracts, compilations,
18 summaries or any other format reproducing or capturing any of the Protected
19 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
20 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
21 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
22 work product, and consultant and expert work product, even if such materials contain
23 Protected Material. Any such archival copies that contain or constitute Protected
24 Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

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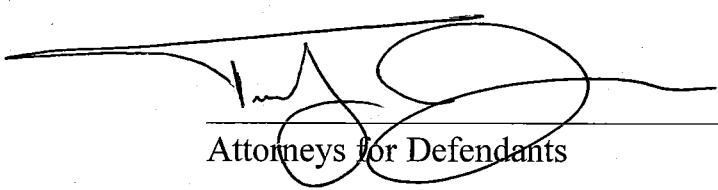
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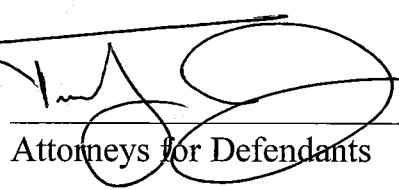
1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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5 DATED: December 22, 2014
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Attorneys for Plaintiff and Class

8 DATED: December 22, 2014
9


Attorneys for Defendants

10 AS MODIFIED BY THE COURT,
11 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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13 DATED: December 29, 2014
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United States District/Magistrate Judge

Howard R. Lloyd

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Northern
7 District of California on [date] in the case of *Kathy Tapia v. Sterling Jewelers Inc.*
8 *et al.*, Case No. 5:14-CV-00624-EJD. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Northern District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name]
19 of _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 | Date:

24 City and State where sworn and signed: _____

26 Printed name:

28 | Signature: